

[Cite as *Richardson v. Byrd*, 2015-Ohio-4090.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103153

TERENCE L. RICHARDSON

RELATOR

vs.

NAILAH K. BYRD

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Mandamus
Motion No. 487641
Order No. 489250

RELEASE DATE: September 30, 2015

FOR RELATOR

Terence L. Richardson, pro se
Inmate No. 630-229
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

ATTORNEY FOR RESPONDENT

Ruchi V. Asher
Cuyahoga County Law Department
310 Lakeside Avenue, 7th Floor
Cleveland, Ohio 44113

MARY EILEEN KILBANE, J.:

{¶1} Terence L. Richardson has filed a complaint for a writ of mandamus. Richardson seeks an order from this court that requires Nailah K. Byrd, Cuyahoga County Clerk of Courts, to issue payments for witness fees. Richardson alleges that, pursuant to four subpoenas, subpoena nos. 901491, 955296, 991252, and 1006207, he was required to testify in two separate criminal cases, Cuyahoga C.P. Nos. CR-551409 and CR-13-577087, which requires witness fee payments pursuant to Crim.R. 17(D). Byrd has filed a motion to dismiss, which we grant for the following reasons.

{¶2} Initially, we find that Richardson’s complaint for a writ of mandamus is procedurally defective for failure to comply with R.C. 2731.04, which provides “application for the writ of mandamus *must* be by petition, in the name of the state on relation of the person applying, and verified by affidavit.” (Emphasis added.). *State ex rel. Huntington Ins. Agency v. Duryee*, 73 Ohio St.3d 530, 1995-Ohio-337, 653 N.E.2d 349; *Maloney v. Sacks*, 173 Ohio St. 237, 181 N.E.2d 268 (1962); *Gannon v. Gallagher*, 145 Ohio St. 170, 60 N.E.2d 666 (1945). Herein, Richardson’s failure to comply with R.C. 2731.04 requires dismissal of the complaint for a writ of mandamus. *Litigaide, Inc. v. Custodian of Records for Lakewood Police Dept.*, 75 Ohio St.3d 508, 1996-Ohio-205, 664 N.E.2d 521.

{¶3} Notwithstanding the aforesaid procedural defect, a substantive review of the complaint for a writ of mandamus fails to demonstrate that Richardson is entitled to

relief. Mandamus is an extraordinary remedy “to be issued with great caution and discretion and only when the way is clear.” *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 166, 364 N.E.2d 1 (1977), citing *State ex rel. Kriss v. Richards*, 102 Ohio St. 455, 132 N.E. 23 (1921), and *State ex rel. Skinner Engine Co. v. Kouri*, 136 Ohio St. 343, 25 N.E.2d 940 (1940).

{¶4} In order for this court to issue a writ of mandamus, Richardson must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452. Richardson is required to prove, by clear and convincing evidence, entitlement to the requested writ of mandamus. *State ex rel. Cleveland Right to Life v. State Controlling Bd.*, 138 Ohio St.3d 57, 2013-Ohio-5632, 3 N.E.3d 185.

{¶5} Herein, Richardson has failed to establish, by clear and convincing evidence, that he is entitled to a writ of mandamus. A person, who is subpoenaed to testify at a legal proceeding, may be entitled to compensation pursuant to Crim.R. 17 and/or R.C. 2335.08. Richardson alleges that he was subpoenaed to serve as a witness on four separate occasions. However, Richardson has failed to attach to his complaint any of the purported subpoenas nor does a review of docket in CR-11-551409 and CR-13-577087 demonstrate that the purported subpoenas were submitted to the trial court or prosecutor for verification of attendance by Richardson and the issuance of any witness

voucher that is redeemable for fees. Absent clear and convincing proof that Richardson was subpoenaed and testified as a witness, the claim for a writ of mandamus must be denied. *State ex rel. Williams v. Trim*, Slip Opinion No. 2015-Ohio-3372; *State ex rel. Manley v. Walsh*, 142 Ohio St.3d 384, 2014-Ohio-4563, 31 N.E.3d 608.

{¶6} Accordingly, we grant Byrd’s motion to dismiss. Costs to Richardson. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶7} Complaint dismissed.

MARY EILEEN KILBANE, JUDGE

EILEEN A. GALLAGHER, P.J., and
MARY J. BOYLE, J., CONCUR